Radiant Splendour Sdn Bhd & Anor v Dr Mohammad Hanis bin Osman

HIGH COURT (KUALA LUMPUR) — SUIT NO WA-22M-1515–09 OF 2023
YUSRIN FAIDZ JC
8 MAY 2025

Civil Procedure — Striking out — Writ and statement of claim — Plaintiffs sued defendant as CEO of bank for inducing breach of settlement agreements — Defendant filed application to strike out plaintiffs' claim — Whether plaintiffs' claim disclosed a reasonable cause of action — Whether plaintiffs' claim was frivolous, vexatious, or an abuse of process — Whether multiplicity of proceedings and issue estoppel applied to bar plaintiffs' claim — Rules of Court 2012 O 18 r 19(1)(a), (b) & (d)

The dispute in the present case revolved around a debt owed by the plaintiffs from Bank Kerjasama Rakyat Malaysia Bhd ('Bank Rakyat') in relation to Istisna' financing facility granted by Bank Rakyat to the plaintiffs to finance the purchase of 80 condominium units. Since then, the parties had entered into the first, second and third settlement agreements in relation to the said debt and had gone through several court actions to settle the dispute including Suit No WA-22M-48–03 of 2016 ('Suit 48'), Suit No WA-22M-225–06 of 2018 ('Suit 225'), Suit No WA-22NCVC-793–11 of 2018 ('Suit 793'), and Suit No WA-22M-633–05 of 2023 ('Suit 633'). Despite the filing of such actions, the plaintiffs' dissatisfaction still subsisted and this culminated into the main suit in the present case whereby the plaintiffs alleged that the defendant, in his capacity as CEO, directed Bank Rakyat to act contrary to the terms of the third settlement agreement in that the defendant had instructed Bank Rakyat to reject any further settlement proposals and/or to decline the grant of any additional extensions of time for payment of the monies owed under the third settlement agreement despite the 'ministerial direction' under s 16 of the Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) Act 1978 ('Akta 202') in the form of 'sokongan menteri' as contained in the plaintiffs' letters dated 23 September 2022 and 6 October 2022 which . It was further alleged that the defendant refused to accept a post-dated cheque in the sum of RM10.13m issued by the first plaintiff in December 2022, as payment towards the sums owing under the third settlement agreement. The plaintiffs contended that such refusal amounted to an inducement of a breach of the third settlement agreement. In response, the defendant filed encl 9 seeking the court's order to strike out the plaintiffs' claim under O 18 r 19(1)(a), (b) and (d) of the Rules of Court 2012. The defendant contended that he had been improperly drawn into this dispute, arguing that the plaintiffs' claim lacked substance, disclosed

no reasonable cause of action, and constituted an abuse of process. The issues that arose in encl 9 were: (a) whether the plaintiffs' claim disclosed a reasonable cause of action; (b) whether the claim was frivolous, vexatious, or an abuse of process; and (c) whether multiplicity of proceedings and issue estoppel applied to bar the plaintiffs' claim.

Held, striking out the plaintiffs' writ and statement of claim against the defendant with costs of RM10,000:

(1) A pleading must set out not only the facts but also the connection between those facts and the legal claim made. In the present case, there was insufficient articulation of how the alleged acts of the defendant amounted to a breach or tortious act, and how that in turn justified the reliefs claimed. As such, the court agreed that the pleading did not, on its face, disclose a reasonable cause of action against the defendant (see para 30).

(2) The legal principle was clear. In the case of *Boey Oi Leng (T/A Indah Reka Construction & Trading) v Trans Resources Corporation Sdn Bhd (Com No 120265-P)* [2001] MLJU 566, the court held that a proceeding was frivolous and vexatious where the wrong party was sued. In the present case, the foundation of the plaintiffs' claims rested upon a series of agreements and settlement arrangements wherein a close examination of these documents, none of which had been disputed in terms of authenticity, revealed that the defendant was not a party or signatory to any of them. Further, the court found that the defendant's appointment as CEO postdated the material events. Even if the defendant held the position of CEO during the material time (which he did not), the defendant, as CEO, was not personally liable for acts carried out by the company unless it was shown that he acted outside the bounds of his authority, in fraud, or in abuse of corporate form, none of which had been pleaded in the present case (see paras 36–39).

(3) The court was of the view that the plaintiffs' reliance on s 16 of Act 202 was fundamentally misconceived. The first plaintiff's correspondence did not amount to a formal directive within the meaning of s 16 of Act 202. In essence, the Minister's powers under s 16 of Act 202 were narrowly circumscribed to matters involving related-party transactions, primarily to safeguard the interests of Bank Rakyat's members and depositors, including those of its subsidiaries. The dispute before the court in the present case, however, pertained to an ordinary commercial borrower and thus clearly fell outside the statutory ambit of that provision. To contend, in this context, that a bank may be compelled to act upon an informal, handwritten ministerial note was to disregard the structural independence and fiduciary obligations of financial institutions (see paras 42–43 & 46–47).

(4) The plaintiffs' statement of claim in the present action bore considerable resemblance, both in substance and in relief sought, to the pleadings filed in Suit 633. The court found that the plaintiffs' pursuit of the present suit, in parallel with Suit 633, fell afoul of the prohibition against duplicative litigation. The court must guard against the risk of inconsistent findings, unnecessary expenditure of judicial time, and the possibility of a party securing multiple bites at the proverbial cherry (see paras 49 & 52).

(5) The doctrine of issue estoppel barred the court from entertaining claims which should have been finally adjudicated in prior litigation. To permit otherwise would render the doctrine of res judicata a nullity and expose the judicial system to repetitive and vexatious litigation. Upon review of the pleadings and decisions in Suit 225 and Suit 795, it was clear that the plaintiffs' principal contention in the Suit 225 and Suit 793 was that the very same settlement agreements now once again under challenge were invalid, unenforceable, and inconsistent with their legal rights. In light of these findings, the court was compelled to agree with the defendant that the doctrine of issue estoppel squarely applied to bar the present claim (see paras 54 & 58).

(6) Upon a careful examination of the affidavit evidence and the surrounding circumstances, the court was satisfied that the defendant had met the requisite threshold for an application under O 18 r 19 of the Rules of Court 2012, in line with the established principles set out in *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36 (see para 59).

[Bahasa Malaysia summary

Pertikaian dalam kes semasa berkisar tentang wang yang terhutang oleh plaintif-plaintif daripada Bank Kerjasama Rakyat Malaysia Bhd ('Bank Rakyat') berhubung Kemudahan Pembiayaan Istisna' yang diberikan oleh Bank Rakyat kepada plaintif-plaintif untuk membiayai pembelian 80 unit kondominium. Sejak daripada itu, pihak-pihak telah menandatangani perjanjian penyelesaian pertama, kedua dan ketiga berhubung dengan hutang tersebut dan telah melalui beberapa tindakan mahkamah untuk menyelesaikan pertikaian tersebut termasuk Guaman No WA-22M-48–03 of 2016 ('Guaman 48'), Guaman No WA-22M-225–06 of 2018 ('Guaman 225'), Guaman No WA-22NCVC-793–11 of 2018 ('Guaman 793'), dan Guaman No WA-22M-633–05 of 2023 ('Guaman 633'). Walaupun tindakan-tindakan sedemikian telah difailkan, plaintif-plaintif masih tidak berpuas hati dan ini membawa kepada saman utama dalam kes semasa di mana plaintif-plaintif mendakwa bahawa defendan, dalam kapasitinya sebagai Ketua Pegawai Eksekutif ('KPE'), mengarahkan Bank Rakyat untuk bertindak bertentangan dengan terma-terma perjanjian penyelesaian ketiga di mana defendan telah mengarahkan Bank Rakyat untuk menolak apa-apa cadangan penyelesaian

dan/atau menolak pemberian apa-apa tambahan pemanjangan masa untuk pembayaran wang yang terhutang di bawah perjanjian penyelesaian ketiga walaupun terdapat 'arahan kementerian' di bawah s 16 Akta Bank Kerjasama Rakyat Malaysia Berhad (Peruntukan Khas) 1978 ('Akta 202') dalam bentuk 'sokongan menteri' seperti yang terkandung dalam surat-surat oleh plaintif-plaintif bertarikh 23 September 2022 dan 6 Oktober 2022. Plaintif-plaintif selanjutnya mendakwa bahawa defendan enggan menerima cek tertunggak dalam jumlah RM10,130,000 yang dikeluarkan oleh plaintif pertama pada Disember 2022, sebagai bayaran terhadap jumlah terhutang di bawah perjanjian penyelesaian ketiga. Plaintif-plaintif berhujah bahawa penolakan sedemikian berjumlah kepada dorongan untuk pelanggaran perjanjian penyelesaian ketiga. Sebagai tindak balas, defendan memfailkan lampiran 9 bagi memohon perintah mahkamah untuk membatalkan tuntutan plaintif-plaintif di bawah A 18 k 19(1)(a), (b) dan (d) Kaedah-Kaedah Mahkamah 2012. Defendan menyatakan bahawa dia telah dimasukkan secara tidak wajar ke dalam pertikaian semasa, dengan alasan bahawa tuntutan plaintif-plaintif kekurangan bukti, tidak mendedahkan kausa tindakan yang munasabah dan berjumlah kepada penyalahgunaan proses. Isu-isu yang timbul dalam lampiran 9 ialah: (a) sama ada tuntutan plaintif-plaintif mendedahkan kausa tindakan yang munasabah; (b) sama ada tuntutan tersebut remeh, menyusahkan, atau penyalahgunaan proses; dan (c) sama ada prosiding berganda dan estoppel isu terpakai untuk menghalang tuntutan plaintif-plaintif.

Diputuskan, membatalkan writ dan pernyataan tuntutan plaintif-plaintif terhadap defendan dengan kos RM10,000:

(1) Pliding haruslah menyatakan bukan sahaja fakta tetapi juga kaitan antara fakta tersebut dan tuntutan undang-undang yang dibuat. Dalam kes semasa, tidak terdapat artikulasi yang mencukupi tentang bagaimana tindakan defendan yang dikatakan sebagai pelanggaran atau perbuatan tort, dan bagaimana ia seterusnya mewajarkan relif yang dituntut. Oleh itu, mahkamah bersetuju bahawa pliding dalam kes semasa kelihatannya tidak mendedahkan kausa tindakan yang munasabah terhadap defendan (lihat perenggan 30).

(2) Prinsip undang-undang yang terpakai adalah jelas. Dalam kes *Boey Oi Leng (T/A Indah Reka Construction & Trading) v Trans Resources Corporation Sdn Bhd (Com No 120265-P)* [2001] MLJU 566, mahkamah memutuskan bahawa sesuatu prosiding adalah remeh dan menyusahkan apabila pihak yang salah telah disaman. Dalam kes semasa, asas tuntutan plaintif-plaintif terletak pada satu siri perjanjian dan pengaturan penyelesaian di mana pemeriksaan rapi terhadap dokumen-dokumen ini, yang mana tiada satu pun daripadanya telah dipertikaikan dari segi kesahihannya, mendedahkan bahawa defendan bukan pihak atau penandatangan kepada mana-mana daripada

dokumen-dokumen tersebut. Selanjutnya, mahkamah mendapati bahawa pelantikan defendan sebagai Ketua Pegawai Eksekutif adalah selepas daripada tarikh peristiwa penting tersebut. Jika pun defendan memegang jawatan Ketua Pegawai Eksekutif pada masa yang material (yang mana dia tidak), defendan, sebagai Ketua Pegawai Eksekutif, tidak bertanggungjawab secara peribadi atas perbuatan yang dilakukan oleh syarikat melainkan jika telah ditunjukkan bahawa dia bertindak di luar batas kuasanya, dalam fraud, atau dalam penyalahgunaan bentuk korporat, yang mana tiada satu pun daripadanya telah diplid dalam kes semasa (lihat perenggan 36–39).

(3) Mahkamah berpendapat bahawa pergantungan plaintif-plaintif kepada s 16 Akta 202 secara asasnya adalah salah sangka. Surat-menyurat plaintif pertama tidak berjumlah kepada arahan rasmi dalam pengertian s 16 Akta 202. Pada dasarnya, kuasa Menteri di bawah s 16 Akta 202 terhad kepada perkara yang melibatkan urus niaga pihak berkaitan, terutamanya untuk menjaga kepentingan ahli-ahli Bank Rakyat dan pendepositnya. Pertikaian di hadapan mahkamah dalam kes semasa, bagaimanapun, adalah berkaitan dengan peminjam komersial biasa dan dengan itu jelas jatuh di luar bidang perundangan peruntukan tersebut. Dalam konteks ini, hujahan bahawa bank boleh dipaksa untuk bertindak berdasarkan nota tulisan tangan tidak rasmi daripada seorang menteri telah mengabaikan kebebasan struktur dan obligasi fidusiari institusi kewangan (lihat perenggan 42–43 & 46–47).

(4) Pernyataan tuntutan plaintif-plaintif dalam tindakan semasa mempunyai persamaan yang agak besar, dari segi inti patinya dan juga dalam relif yang dipohon, dengan pliding yang difailkan dalam Guaman 633. Mahkamah mendapati bahawa apa yang plaintif-plaintif inginkan dalam saman semasa, yang selari dengan Guaman 633, adalah bertentangan dengan larangan terhadap pertindanan litigasi. Mahkamah harus berjaga-jaga terhadap risiko dapatan yang tidak konsisten, penggunaan masa kehakiman yang tidak perlu, dan kemungkinan sesuatu pihak mendapat kesempatan kedua (lihat perenggan 49 & 52).

(5) Doktrin estoppel isu menghalang mahkamah daripada melayan tuntutan yang sepatutnya diputuskan dalam litigasi terdahulu. Membenarkan yang sebaliknya akan menjadikan doktrin res judicata terbatal dan mendedahkan sistem kehakiman kepada litigasi yang berulang dan menyusahkan. Setelah menyemak pliding dan keputusan dalam Guaman 225 dan Guaman 795, adalah jelas bahawa pertikaian utama plaintif-plaintif dalam Guaman 225 dan Guaman 793 adalah bahawa perjanjian-perjanjian penyelesaian, yang sama yang kini sekali lagi dicabar dalam kes semasa, adalah tidak sah, tidak boleh dikuatkuasakan dan tidak konsisten dengan hak undang-undang mereka. Berdasarkan dapatan-dapatan ini, mahkamah terpaksa bersetuju dengan defendan

bahawa doktrin estoppel isu adalah terpakai untuk menghalang tuntutan semasa (lihat perenggan 54 & 58).

(6) Setelah memeriksa dengan teliti keterangan afidavit dan keadaan sekeliling, mahkamah berpuas hati bahawa defendan telah memenuhi ambang yang diperlukan untuk permohonan di bawah A 18 k 19 Kaedah-Kaedah Mahkamah 2012, selaras dengan prinsip yang ditetapkan dalam *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36 (lihat perenggan 59).]

Cases referred to

Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd [1995] 3 MLJ 189, SC (refd)

Atalian Holdings (Malaysia) Sdn Bhd v Datuk Hj Radzali Hassan [2021] MLJU 533, HC (refd)

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36, SC (folld)

Bank Kerjasama Rakyat Malaysia Bhd v Abdul Aziz bin Zainal & Ors [2023] 12 MLJ 355; [2023] 10 CLJ 44, HC (refd)

Boey Oi Leng (T/A Indah Reka Construction & Trading) v Trans Resources Corporation Sdn Bhd (Com No 120265-P) [2001] MLJU 566, HC (refd)

Chung Khiaw Bank Ltd v Tio Chee Hing [1987] 2 MLJ 701, SC (refd)

Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin & Ors [1998] 1 SLR 374, CA (refd)

Harapan Permai Sdn Bhd v Sabah Forest Industries Sdn Bhd [2011] 2 MLJ 192, CA (refd)

Ho Num Chon & Anor v Tech-Lab Manufacturing Sdn Bhd [2017] 9 MLJ 32; [2017] 5 CLJ 187, HC (folld)

Jasa Keramat Sdn Bhd & Anor v Monatech (M) Sdn Bhd [1999] 4 MLJ 637, CA (refd)

Middy Industries Sdn Bhd & Ors v Arensi-Marley (M) Sdn Bhd [2013] 3 MLJ 511, CA (refd)

Nazaruddin bin Mohd Shariff v Roslan bin Maulud [2020] MLJU 1362, HC (folld)

Pengiran Othman Shah bin Pengiran Mohd Yusoff & Anor v Karambunai Resorts Sdn Bhd (formerly known as Lipkland (Sabah) Sdn Bhd & Ors [1996] 1 MLJ 309, CA (refd)

Radiant Splendour Sdn Bhd & Ors v Dato' Seri Mohd Najib bin Tun Abdul Razak & Ors [2020] MLJU 961, HC (refd)

Salomon v Salomon & Co Ltd [1897] AC 22, HL (refd)

Sivarasa Rasiah & Ors v Che Hamzah Che Ismail & Ors [2012] 1 MLJ 473, CA (refd)

Tan Wei Hong (a minor suing through guardian ad litem and next friend Chuang Yin E) & Ors v Malaysia Airlines Bhd and other appeals [2019] 1 MLJ 59; [2018] 9 CLJ 425, FC (refd)

Vernazza, Re [1959] 2 All ER 200, HC (refd)
Yeng Hing Enterprise Sdn Bhd v Liow Su Fah [1979] 2 MLJ 240, FC (refd)

Legislation referred to

Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) Act 1978 ss 4, 5(1), 6, 14, 16, Part IV
Central Bank of Malaysia Act 2009 s 56
Co-Operative Societies Act 1993 s 51(3)
Development Financial Institutions Act 2002 ss 5, 5A
Rules of Court 2012 O 18 r 19, 19(1), (1)(a), (1)(b), (1)(d), O 21 r 3

Bhavanash Sharma (with Chetna Brijmohan & Amanda Lim) (Bhavanash Sharma) for the plaintiff.
Natalia Izra Nasaruddin (with Tengku Nazmi bin Tengku Anuar) (Messrs Azmi & Assoc) for the defendant.

Yusrin Faidz JC:

INTRODUCTION

[1] The principle is clear: much like a courtroom drama where every character, be they a seasoned counsel or a fledgling advocate, gets their moment to present their case, our legal system ensures that justice is not reserved for the strongest, but accessible to all. Yet, just as a trial cannot be endlessly retried simply because one side dislikes the verdict, the integrity of the process demands closure. Constantly rewriting the script after the final act undermines the certainty that justice requires. It is within this framework that the defendant's striking out application must be considered.

BACKGROUND FACTS

[2] Enclosure 9 involves the defendant, Dr Mohammad Hanis bin Osman, seeking to strike out the plaintiffs' claim under O 18 rr 19(1)(a), (b) and (d) of the Rules of Court 2012 ('the Rules'). The defendant contends he has been improperly drawn into this dispute, arguing that the plaintiff's claim lacks substance, discloses no reasonable cause of action, and constitutes an abuse of process.

[3] Based on the plaintiffs' statement of claim ('SOC'), the origin of the present dispute can be traced to a financing arrangement entered into on 24 July 2008, when Bank Kerjasama Rakyat Malaysia Bhd ('Bank Rakyat'), a cooperative bank, extended an *Istisna*' financing facility amounting to RM198,888,750 to the first plaintiff, Radiant Splendour Sdn Bhd. The facility was intended to finance the purchase of 80 condominium units in a development known as Palazzio Tower B Condominium, situated on the

master title held under Grant 14765, Lot No 48629, Mukim and District of Kuala Lumpur. This transaction was formalised by way of an *Istisna*' facility agreement, sale and purchase agreements, a deed of assignment, and guarantee agreements executed by the second plaintiff, Rajesh a/l Jaikishan, and Deepak Jaikishan a/l Jaikishan Rewachand ('Deepak Jaikishan').

[4] Following defaults by the plaintiffs and Deepak Jaikishan, Bank Rakyat and the first plaintiff entered the following agreements:

(a) first settlement agreement on 19 April 2013, with a power of attorney given to Bank Rakyat to sell the condominium units; and

(b) second settlement agreement on 30 June 2016, following a judgment in default obtained by Bank Rakyat in Suit No WA-22M-48–03 of 2016 ('Suit 48').

[5] Vide Suit No WA-22M-225–06 of 2018 ('Suit 225'), the plaintiffs and Deepak Jaikishan sued Bank Rakyat to have the second settlement agreement rescinded due to fraudulent concealment of sale details and misrepresentation, as well as to set aside the default judgment obtained in Suit 48. Their ultimate aim of Suit 225 was to invalidate the aforementioned *Istisna*' financing facility granted by Bank Rakyat. On 14 November 2018, Suit 225 was withdrawn with liberty to file afresh.

[6] Vide Suit No WA-22NCVC-793–11 of 2018 ('Suit 793'), filed shortly after the withdrawal of Suit 255, the plaintiffs and Deepak Jaikishan sued five individual defendants, including former Malaysian Prime Minister Najib Razak, and the CEO of Bank Rakyat, Tan Sri Shukry Mohd Salleh, alleging fraud, conspiracy, and abuse of process. Again, Suit 793 was filed with the main aim to invalidate the same *Istisna*' financing facility granted by Bank Rakyat. The plaintiffs in Suit 793 had repeatedly admitted the debt in prior lawsuits and the first and second settlement (2012–2017) but later claimed the debt was fabricated to coerce Deepak Jaikishan's favourable testimony in the Altantuya Shaariibuu murder trial. The defendants applied to strike out Suit 793, arguing issue estoppel and abuse of process. In her grounds of judgment dated 13 January 2020, Azimah Omar J (as Her Ladyship then was) held the plaintiffs' allegations contradicted their prior admissions and conduct, lacked credible evidence, and failed to include Bank Rakyat. Applying principles of finality in litigation and estoppel, Her Ladyship struck out Suit 793 as she found it to be unsustainable, frivolous, and vexatious (see: *Radiant Splendour Sdn Bhd & Ors v Dato' Seri Mohd Najib bin Tun Abdul Razak & Ors* [2020] MLJU 961 (HC)).

[7] Pursuant to the third settlement agreement executed on 7 May 2021, the first plaintiff undertook to remit a sum of RM12.2m in full and final

settlement by 31 December 2021. Bank Rakyat refused to accede to any further extensions or modifications to the agreed payment terms, which the first plaintiff nevertheless sought, thereby evincing an intention not to be bound by the terms of the settlement and amounting to a repudiation of the third settlement agreement.

[8] On 22 May 2023, vide Suit No WA-22M-633–05 of 2023 ('Suit 633'), the plaintiffs and Deepak Jaikishan sued Bank Rakyat for breaching the terms of the first settlement agreement. In the said legal action, the plaintiffs alleged that Bank Rakyat permitted the lapse of the power of attorney, auctioned condominium units below the agreed price, and concealed sale details, thereby causing financial losses. It is further alleged that despite the second settlement agreement reducing the debt to RM22m and the third settlement agreement reducing it to RM12.2m, Bank Rakyat refused payment via cheque and pursued new law suits and execution proceedings in 2023 for damages in the region of RM70m. The plaintiffs accused the bank of bad faith, concealment, and manipulating legal processes to enforce oppressive clauses. They seek reference to the Shariah Advisory Council of Bank Negara Malaysia, declarations invalidating agreements, voiding abusive terms, and compelling the bank to account for sales, repay shortfalls, and compensate for damages.

[9] On 1 August 2023, the plaintiffs commenced the present action against the defendant, seeking reliefs arising from the same *Istisna*' financing facility and the subsequent settlement agreements entered into with Bank Rakyat. In this current suit, the plaintiffs allege that the defendant, in his capacity as CEO, directed Bank Rakyat to act contrary to the terms of the third settlement agreement in that the defendant had instructed Bank Rakyat to reject any further settlement proposals and/or to decline the grant of any additional extensions of time for payment of the monies owed under the third settlement agreement. It is further alleged that the defendant refused to accept a post-dated cheque in the sum of RM10.13m, issued by the first plaintiff in December 2022, as payment towards the sums owing under the third settlement agreement. The plaintiffs contend that such refusal amounted to an inducement of a breach of the third settlement agreement.

[10] The defendant filed striking out application in encl 9 on 13 October 2023. The hearing initially scheduled for 27 April 2024 was postponed due to the medical condition of the plaintiffs' then counsel. The subsequent hearing on 7 May 2024 was adjourned following a last-minute notification, received scarcely an hour before the hearing, that the plaintiffs intended to withdraw their entire claim against defendant to facilitate further settlement talks. The matter was next called up on 27 May 2024. As the parties were unable to reach consensus on the issues of costs and whether the plaintiffs ought to be permitted to refile the claim, I directed that a formal withdrawal application

under O 21 r 3 of the Rules of Court 2012 be filed. This direction eventually culminated in the filing of encl 29 on 14 June 2024.

[11] On 22 August 2024, the plaintiffs' solicitors filed encl 35, seeking to withdraw themselves from acting. This move, given the course of proceedings, was perhaps not entirely unexpected. Subsequently, on 26 August 2024, the defendant's new solicitors withdrew encl 29, and the hearing of encl 9 was fixed for 9 October 2024. However, due to the plaintiffs' delay in filing their written submissions, the hearing was deferred to 24 October 2024.

[12] At the hearing on 24 October 2024, upon hearing the arguments, I fixed the decision date on encl 9 for 2 December 2024, to afford the plaintiffs an opportunity to file a further affidavit on the alleged non-compliance with a ministerial directive and the defendant's purported role in undermining the settlement process. The decision date was thereafter adjourned to 24 January 2025 to allow the plaintiffs to file an additional affidavit asserting that the defendant had been directed to resign within 24 hours on 8 November 2024. This event is argued to bear relevance to the alleged 'second derailment' of the settlement. When the plaintiffs' affidavit was again filed belatedly, I was constrained to defer the decision to 3 March 2025 to allow the defendant to file a reply as well as supplementary submissions. The court notes, not without some concern, the recurring pattern of delay attributable to the plaintiffs' side, despite multiple accommodations afforded throughout these proceedings.

[13] On 3 March 2025, having heard and considered the application alongside the affidavits filed post-submission, I allowed the defendant's application to strike out the plaintiffs' writ and statement of claim. The plaintiffs were ordered to pay costs in the sum of RM10,000 to the defendant. The plaintiffs have since filed a notice of appeal against my decision. I now proceed to deliver the grounds of my judgment.

ISSUES

[14] The application in encl 9 addresses the following issues:

(a) whether the plaintiffs' claim discloses a reasonable cause of action;

(b) whether the claim is frivolous, vexatious, or an abuse of process; and

(c) whether multiplicity of proceedings and issue estoppel applies to bar the plaintiffs' claim.

COUNSELS' CONTENTIONS

The plaintiffs' contentions

[15] The learned counsel for the plaintiff, Bhavanash Sharma, contends that sufficient material facts have been pleaded to justify legal action against the defendant. Counsel argue that the defendant's actions as Bank Rakyat's CEO were manipulative, breached Shariah principles, and caused unjust financial harm. The essence of the plaintiff's claim is to seek judicial intervention to enforce transparency, uphold Islamic finance principles, and compensate for losses stemming from Bank Rakyat's alleged misconduct. The defendant is argued to be the 'directing mind' of Bank Rakyat post-2022.

[16] Learned counsel for the plaintiff further submit that the evidence adduced in encl 52 (at pp 26–27) demonstrates that the letters issued by the first plaintiff on 23 September 2022 and 6 October 2022 bore the endorsement of Tan Sri Noh Omar, then Minister of Entrepreneur and Cooperatives Development. This, according to the plaintiffs, constitutes a 'ministerial direction' within the meaning of s 16 of the Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) Act 1978 ('the Bank Rakyat Act'), thereby obligating Bank Rakyat to accept the first plaintiff's proposed terms of settlement. The plaintiffs contend that the defendant played a pivotal role in thwarting the third settlement agreement by inducing or otherwise causing Bank Rakyat to disregard what they assert to be a binding ministerial directive.

The defendant's contentions

[17] The learned counsel for the defendant, Natalia Izra Nasaruddin, argues that the plaintiffs' claim hinges on Bank Rakyat's conduct between 2008–2021, predating the defendant's appointment as Bank Rakyat's CEO. Invoking the principle established in *Salomon v Salomon & Co Ltd* [1897] AC 22 (HL), counsel for the defendant argues that Bank Rakyat's corporate veil cannot be pierced in absence of fraud or unconscionability, and thus, attributing Bank Rakyat's actions to the defendant is legally unsustainable.

[18] The learned counsel for the defendant also contends that the plaintiffs' pleadings are defective, as the SOC fails to provide material particulars to substantiate allegations of conspiracy, inducement, or misrepresentation. Crucially, no evidence connects the defendant to Bank Rakyat's decisions prior to 2022.

[19] Regarding multiplicity of proceedings, learned counsel for the defendant highlights that the plaintiffs have already initiated Suit 633 against Bank Rakyat, seeking identical relief. Pursuing parallel lawsuits against both Bank Rakyat and the defendant for the same grievances is argued to constitute an abuse of process. Reliance is made on the case of *Nazaruddin bin Mohd Shariff v Roslan bin Maulud* [2020] MLJU 1362 (HC).

[20] The learned counsel for defendant further raises issue estoppel, noting that the plaintiffs' challenge to the settlements was conclusively dismissed in Suit 793. Re-litigating this matter, counsel argues, violates the doctrine of finality in litigation, as affirmed in *Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189 (SC).

[21] On the question of the applicability of s 16 of the Bank Rakyat Act, learned counsel for the defendant contends that the provision pertains exclusively to the Board of Directors, of which the defendant was not a member. Defendant further relies on the case of *Bank Kerjasama Rakyat Malaysia Bhd v Abdul Aziz bin Zainal & Ors* [2023] 12 MLJ 355; [2023] 10 CLJ 44 (HC) (per Mohd Arief Emran Arifin J) to argue that based on s 5A of the Development Financial Institutions Act 2002 ('the DFIA'), the Board of Director of Bank Rakyat has a duty to act in the best interest of the bank and 'it is not to ensure that any personal requests or demands of any third party, even if the said person is the Prime Minister or the Minister of Finance, are adhered to'.

COURT'S FINDINGS

[22] The provisions on striking out of pleadings are provided in O 18 r 19(1) of the Rules which is reproduced below:

> 19 Striking out pleadings and endorsements (O 18 r 19)
>
> (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement, of any writ in the action, or anything in any pleading or in the endorsement, on the ground that —
>
> (a) it *discloses no reasonable cause of action* or defence, as the case may be;
>
> (b) it is *scandalous, frivolous or vexatious*;
>
> (c) it may prejudice, embarrass or delay the fair trial of the action; or
>
> (d) it is otherwise *an abuse of the process of the Court* and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

[23] In the case of *Pengiran Othman Shah bin Pengiran Mohd Yusoff & Anor v Karambunai Resorts Sdn Bhd (formerly known as Lipkland (Sabah) Sdn Bhd & Ors* [1996] 1 MLJ 309 (CA) the Court of Appeal held as follows:

> The discretionary power to dismiss an action summarily under O 18 r 19 of the RHC and under the inherent jurisdiction of the court is *a drastic power which should only be exercised in plain and obvious cases*. When a case is argued on the affidavit evidence available, it must become plain and obvious that the case has no chance of success. (Emphasis added.)

[24] Ramly Ali FCJ in *Tan Wei Hong (a minor suing through guardian ad litem and next friend Chuang Yin E) & Ors v Malaysia Airlines Bhd and other appeals* [2019] 1 MLJ 59; [2018] 9 CLJ 425 (FC) laid out the test for the striking out of pleadings; wherein His Lordship referred to the case of *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36 (SC) and held as follows:

> The tests for striking out application under O 18 r 19 of the ROC, as adopted by the Supreme Court in *Bandar Builders* are, inter alia, as follows:
>
> (a) it is *only in plain and obvious cases that recourse should be had to the summary process under the rule*;
>
> (b) this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it *obviously unsustainable*;
>
> (c) it *cannot be exercised by a minute examination of the documents and facts* of the case in order to see whether the party has a cause of action or a defence;
>
> (d) if there is a point of law which requires serious discussion, an objection should be taken on the pleadings and the point set down for argument under O 33 r 3 of the ROC; and
>
> (e) the court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious or that the defences raised are not arguable. (Emphasis added.)

[25] The Court of Appeal, in *Sivarasa Rasiah & Ors v Che Hamzah Che Ismail & Ors* [2012] 1 MLJ 473 (CA) adopted the well-settled principle of striking out in the following passage:

> A striking out order should not be made summarily by the court if there is issue of law that requires lengthy argument and mature consideration. It should also not be made if there is issue of fact that is capable of resolution only after taking viva voce evidence during trial (see: *Lai Yoke Ngan & Anor v Chin Teck Kwee & Anor* [1997] 2 MLJ 565; [1997] 3 CLJ 305 (FC)).

[26] Arising from the foregoing, the court shall now proceed to consider the pertinent issues advanced in the defendant's application to strike out the pleading.

Whether the plaintiffs' claim discloses a reasonable cause of action

[27] The test for striking out a pleading for disclosing no reasonable cause of action is well established. As stated in *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36; [1993] 4 CLJ 7 (SC), a claim may be struck out where it is 'obviously unsustainable'. In *Atalian Holdings (Malaysia) Sdn Bhd v Datuk Hj Radzali Hassan* [2021] MLJU 533 (HC), Liza Chan Sow Keng JC (as Her Ladyship then was) struck out a

counterclaim on the basis that there was no legal nexus between the facts pleaded and the relief sought.

[28] I find merit in the defendant's contention that the plaintiffs' SOC is deficient in material particulars. Learned counsel for the defendant rightly point out that the pleadings are vague and fail to plead with particularity the defendant's alleged instructions to Bank Rakyat or how those instructions allegedly led to actionable harm.

[29] The failure to properly plead the causative link between the defendant's conduct and the reliefs sought, particularly when the plaintiffs' prayers relate primarily to settlement agreements to which the defendant is not a party, creates a disconnect that renders the pleading defective.

[30] A pleading must set out not only the facts but also the connection between those facts and the legal claim made. In the present case, there is insufficient articulation of how the alleged acts of the defendant amount to a breach or tortious act, and how that in turn justifies the reliefs claimed. As such, the court agrees that the pleading does not, on its face, disclose a reasonable cause of action against the defendant. The proposal of the learned counsel of the plaintiffs to have their SOC amended during their final submission does not remedy the fundamental deficiencies in the pleading, nor does it justify a belated revision at this advanced stage of proceedings.

Whether the claim is frivolous, vexatious, or an abuse of process

[31] The Court of Appeal in *Middy Industries Sdn Bhd & Ors v Arensi-Marley (M) Sdn Bhd* [2013] 3 MLJ 511 (CA) describes this limb of O 18 r 19 as follows:

> [7] *Sub-paragraph (1)(b) of r 19, deals with pleading which is 'scandalous, frivolous or vexatious'*; while sub-para (1)(d) of the same rule deals with 'an abuse of the process of the court'. In *Murray v Epsom Local Board* [1897] 1 Ch 35 it was held by the court that, *'scandalous' generally refers to matters which improperly cause derogatory light on someone, usually a party to an action, with respect to moral character or uses repulsive language* (see also *Boey Oi Leng (t/a Indah Reka Construction Trading) v Trans Resources Corporation Sdn Bhd* [2001] MLJU 566; [2001] 4 AMR 4807 and *Indah Desa Saujana Corp Sdn Bhd & Ors v James Foong Cheng Yuen, Judge, High Court Malaya & Anor* [2008] 2 MLJ 11). *The words 'frivolous or vexatious' generally refer to a groundless action or statement with no prospect of success, often raised to embarrass or annoy the other party to the action. In considering whether any proceedings were vexatious or frivolous, one is entitled to and ought to look at the whole history of the matter and it is not to be determined by whether the pleading discloses a cause of action or not* (see *Attorney General of Duchy of Lancaster v London & North Western Railway Co* [1892] 3 Ch 274; and *Re Vernazza* [1959] 2 All ER 200). It was decided in the above cases that 'frivolous or vexatious actions mean cases which are obviously

frivolous or vexatious or obviously unsustainable'. (Emphasis added.)

[32] In *Chung Khiaw Bank Ltd v Tio Chee Hing* [1987] 2 MLJ 701 (SC) the Supreme Court referred to the English case of *Re Vernazza* [1959] 2 All ER 200 (HC) which held the following:

> ... in determining whether proceedings were vexatious the *court must look at the whole history of the matter*, not solely at the question whether the pleadings had disclosed a cause of action. (Emphasis added.)

[33] In *Harapan Permai Sdn Bhd v Sabah Forest Industries Sdn Bhd* [2011] 2 MLJ 192 (CA), Low Hop Bing JCA (at para 18), opines that an abuse of process of the court includes where such process has not been used in a bona fide manner.

[34] In *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin & Ors* [1998] 1 SLR 374 (CA) at p 384, the Singapore Court of Appeal per Yong Pung How CJ at para 22 held as follows:

> The term 'abuse of the process of the court', in O 18 r 19(1)(d) has been given a wide interpretation by the courts. It includes considerations of public policy and the interest of justice. This term signifies that the process of the court must be used bona fide and properly and must not be abused. The court will prevent the improper use of its machinery. It will prevent the judicial process from being used as a means of vexation and oppression in the process of litigation. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed and will depend on all relevant circumstances of the case;

[35] In *Jasa Keramat Sdn Bhd & Anor v Monatech (M) Sdn Bhd* [1999] 4 MLJ 637 (CA), Gopal Sri Ram JCA (later FCJ) (at pp 645I–646A) held as follows:

> Since the circumstances in which the court's process may be abused are varied and numerous, the categories of such cases are therefore not closed. Whether the institution of an action or its continuation or a step taken therein amounts to an abuse of process depends upon particular and individual circumstances.

[36] The foundation of the plaintiffs' claims rests upon a series of agreements and settlement arrangements wherein a close examination of these documents, none of which have been disputed in terms of authenticity, reveals that the defendant was not a party or signatory to any of them. These documents involve the plaintiffs, Deepak Jaikishan, and Bank Rakyat, and not the defendant.

[37] The legal principle is clear. In *Boey Oi Leng (T/A Indah Reka Construction & Trading) v Trans Resources Corporation Sdn Bhd (Com*

No 120265-P) [2001] MLJU 566 (HC), Low Hop Bing J (as His Lordship then was) held that a proceeding is frivolous and vexatious where the wrong party is sued. Similarly, in *Yeng Hing Enterprise Sdn Bhd v Liow Su Fah* [1979] 2 MLJ 240 (FC), the Federal Court struck out a claim on the basis that the defendant, being a separate juristic entity and not a party to the matters in question, had no reasonable cause of action against it.

[38] I also find that the defendant's appointment as CEO postdates the material events. From the affidavits filed, it is an undisputed fact that the defendant was only appointed acting CEO of Bank Rakyat on 1 April 2022 and as CEO on 1 July 2022. Based on the SOC, the material events complained of by the plaintiffs occurred well before these dates.

[39] Even if the defendant held the position of CEO during the material time (which he did not), the plaintiffs' claim remains flawed in law. It is trite that a company is a distinct legal entity, as held in *Salomon v Salomon & Co Ltd.* The defendant, as CEO, is not personally liable for acts carried out by the company unless it is shown that he acted outside the bounds of his authority, in fraud, or in abuse of corporate form, none of which has been pleaded in this case.

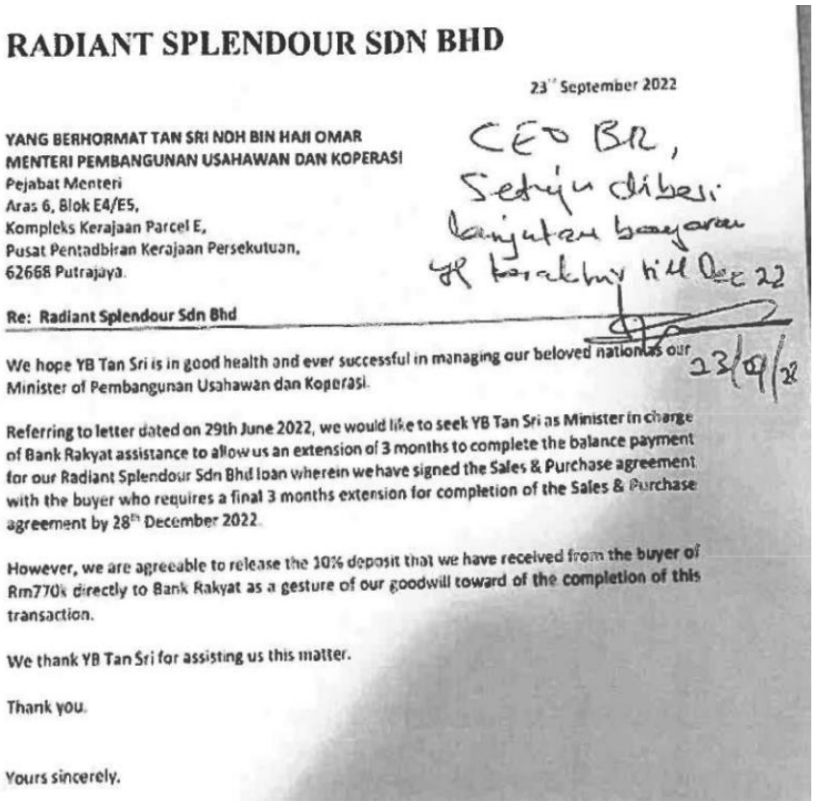
[40] In a further attempt to fortify their claim against the defendant, the plaintiffs introduced an additional allegation via affidavit in encl 52 filed on 25 January 2025, asserting that the defendant had acted in defiance of a ministerial direction under s 16 of the Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) Act 1978 ('the Bank Rakyat Act'). Section 16 provides as follows:

> 16 Directions by Minister
>
> The Minister may, from time to time, *issue directions to the Board* or to the managing body of any of the subsidiaries of the Bank *with respect to the running of the affairs of the Bank or the subsidiary, including such directions as he considers necessary or expedient for the protection of the interests of the members or depositors of the Bank or subsidiary*, and directions for the furnishing to him of such information concerning the affairs of the Bank or subsidiary as he may specify; and *the Board or managing body, as the case may be, shall comply with such directions*. (Emphasis added.)

[41] At the outset, it is pertinent to note that no specific ministerial direction was pleaded within the SOC. Rather, the plaintiffs merely alleged that the defendant refused to grant an extension of time despite the purported 'sokongan menteri' (ministerial support), as referenced in paras 22.2, 22.6, 22.7, and 29.11 of the SOC.

[42] Even assuming, arguendo, that the defendant had influenced Bank Rakyat's board of directors to disregard the so-called 'sokongan Menteri', I am

of the considered view that the plaintiffs' reliance on s 16 of the Bank Rakyat Act is fundamentally misconceived. For completeness, I reproduce in figures 1 and 2 below the handwritten annotations made by the outgoing Minister. By way of context, the notes were penned a few days before the dissolution of Parliament in anticipation of the 15th General Election, which was scheduled for 19 November 2022.



RADIANT SPLENDOUR SDN BHD

23rd September 2022

YANG BERHORMAT TAN SRI NOH BIN HAJI OMAR
MENTERI PEMBANGUNAN USAHAWAN DAN KOPERASI
Pejabat Menteri
Aras 6, Blok E4/E5,
Kompleks Kerajaan Parcel E,
Pusat Pentadbiran Kerajaan Persekutuan,
62668 Putrajaya.

CEO BR,
Setuju diberi
lanjutan bayaran
yg terakhir till Dec 22

Re: Radiant Splendour Sdn Bhd

We hope YB Tan Sri is in good health and ever successful in managing our beloved nation as our Minister of Pembangunan Usahawan dan Koperasi.

23/9/22

Referring to letter dated on 29th June 2022, we would like to seek YB Tan Sri as Minister in charge of Bank Rakyat assistance to allow us an extension of 3 months to complete the balance payment for our Radiant Splendour Sdn Bhd loan wherein we have signed the Sales & Purchase agreement with the buyer who requires a final 3 months extension for completion of the Sales & Purchase agreement by 28th December 2022.

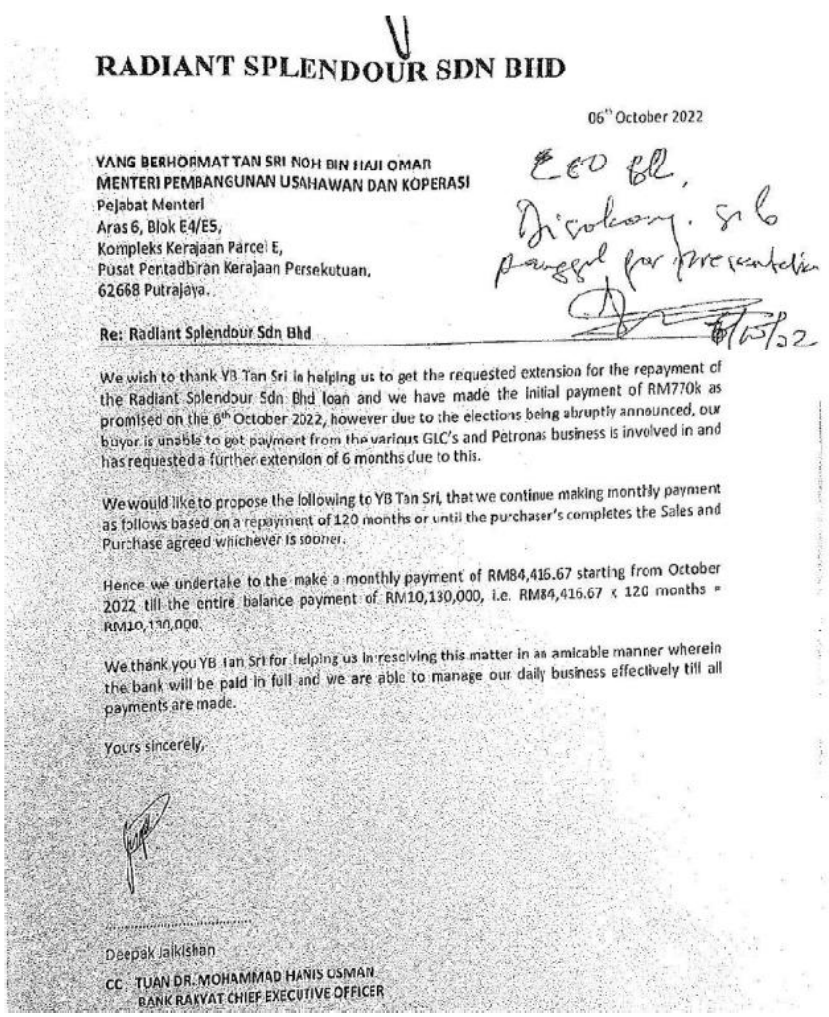
However, we are agreeable to release the 10% deposit that we have received from the buyer of Rm770k directly to Bank Rakyat as a gesture of our goodwill toward of the completion of this transaction.

We thank YB Tan Sri for assisting us this matter.

Thank you.

Yours sincerely.

Figure 1: Letter from first plaintiff to YB Tan Sri Noh Omar dated 23 September 2022 containing the Minister's handwritten note stating 'CEO BR, setuju diberi lanjutan bayaran yg terakhir till Dec 2022'.



RADIANT SPLENDOUR SDN BHD

06th October 2022

YANG BERHORMAT TAN SRI NOH BIN HAJI OMAR
MENTERI PEMBANGUNAN USAHAWAN DAN KOPERASI
Pejabat Menteri
Aras 6, Blok E4/E5,
Kompleks Kerajaan Parcel E,
Pusat Pentadbiran Kerajaan Persekutuan,
62668 Putrajaya.

CEO BR,
Disokong. Sila
panggil for presentation

Re: Radiant Splendour Sdn Bhd

We wish to thank YB Tan Sri in helping us to get the requested extension for the repayment of the Radiant Splendour Sdn Bhd loan and we have made the initial payment of RM770k as promised on the 6th October 2022, however due to the elections being abruptly announced, our buyer is unable to get payment from the various GLC's and Petronas business is involved in and has requested a further extension of 6 months due to this.

We would like to propose the following to YB Tan Sri, that we continue making monthly payment as follows based on a repayment of 120 months or until the purchaser's completes the Sales and Purchase agreed whichever is sooner.

Hence we undertake to the make a monthly payment of RM84,416.67 starting from October 2022 till the entire balance payment of RM10,130,000, i.e. RM84,416.67 x 120 months = RM10,130,000.

We thank you YB Tan Sri for helping us in resolving this matter in an amicable manner wherein the bank will be paid in full and we are able to manage our daily business effectively till all payments are made.

Yours sincerely,

.....
Deepak Jaikishan

CC TUAN DR. MOHAMMAD HANIS OSMAN
BANK RAKYAT CHIEF EXECUTIVE OFFICER

Figure 2: Letter from first plaintiff to YB Tan Sri Noh Omar dated 6 October 2022 containing the Minister's handwritten note stating 'CEO BR, Disokong. Sila panggil for presentation'.

[43] I am of the considered view that the minister's handwritten notes on the first plaintiff's correspondence do not amount to a formal directive within the meaning of s 16 of the Act. That provision, found in Part IV, governing supervision and control, concerns itself with regulatory oversight and conflict-of-interest safeguards, particularly in respect of loans to directors, officers, and related parties. While ministerial intervention is contemplated under the Bank Rakyat Act, it is of a specific regulatory character. Such oversight mirrors the protection extended to ordinary cooperative societies

under s 51(3) of the Co-Operative Societies Act 1993.

[44] Cooperative banks and societies warrant heightened regulatory protection from the Ministry of Entrepreneurship and Cooperative Development due to their distinctive governance structure, social orientation, and inherent vulnerabilities when compared to conventional financial institutions. Unlike profit-driven entities, cooperatives are established to serve the welfare of their members, which makes them susceptible to manipulation by unscrupulous parties or adverse market dynamics. Cooperative banks, in particular, rely substantially on deposits from members; any erosion of trust may trigger destabilising bank runs. More broadly, cooperative societies play an essential role in grassroots economic empowerment. Ensuring their stability and integrity thus serves a broader public interest, especially for economically vulnerable communities.

[45] If we are to focus to the note in question, it lacks the requisite formal attributes or legal force. It may, at its highest, be characterized consistent with the plaintiffs' own pleading, as a ministerial support or 'sokongan menteri' rather than a binding directive. The phrase 'sila panggil for presentation' in Figure 2 plainly indicates a request or suggestion, not a command to accept the terms proposed by the first plaintiff. It warrants emphasis that the Bank Rakyat Act vests statutory autonomy in the Board of Directors. Sections 4, 5(1), 6 and 14 of the Bank Rakyat Act as well as ss 5 and 5A of DFIA unequivocally assign responsibility for the bank's operational and commercial decisions to the Board, not the Minister. At this juncture, it bears emphasis that the defendant, while serving as the CEO, was at all material times not a member of the Board of Directors of Bank Rakyat.

[46] In essence, the Minister's powers under s 16 of the Bank Rakyat Act are narrowly circumscribed to matters involving related-party transactions, primarily to safeguard the interests of Bank Rakyat's members and depositors, including those of its subsidiaries. The dispute before this court, however, pertains to an ordinary commercial borrower and thus clearly falls outside the statutory ambit of that provision.

[47] To contend, in this context, that a bank may be compelled to act upon an informal, handwritten ministerial note is to disregard the structural independence and fiduciary obligations of financial institutions. If such notes were to carry binding effect, one must ask: are we then to permit every borrower to brandish a hastily scrawled 'sokongan menteri' as a shield against contractual liability? Such a proposition finds no support in the statute and, if accepted, would dangerously erode the principles of good governance and the integrity of autonomous banking operations.

Whether multiplicity of proceedings or issue estoppel applies to bar the plaintiffs' claim

[48] On this issue, the learned counsel for the defendant submits that the plaintiffs' commencement of the present proceedings constitutes a clear case of multiplicity of actions and an abuse of the court's process. This contention is premised on the assertion that the present suit substantially overlaps with the claims, factual matrix, and reliefs sought in Suit 633, which had been earlier filed by the plaintiffs jointly with Deepak Jaikishan.

[49] Upon careful examination of the pleadings of Suit 633, which is also currently being heard before me, I find merit in the defendant's submission. The plaintiffs' SOC in the present action bears considerable resemblance, both in substance and in relief sought, to the pleadings filed in Suit 633. In particular, both suits contain allegations that question the conduct of the defendant vis a vis the principles of Shariah compliance and seek a reference to the Shariah Advisory Council under s 56 of the Central Bank of Malaysia Act 2009. Although the wording of the reliefs in the two suits is not identical, the essential nature and objective of the reliefs are substantially the same.

[50] It is trite that the institution of parallel proceedings premised on the same or substantially similar facts, involving the same parties or parties with aligned interests, and seeking similar remedies, constitutes an abuse of the court's process. The Federal Court in *Ho Num Chon & Anor v Tech-Lab Manufacturing Sdn Bhd* [2017] 9 MLJ 32; [2017] 5 CLJ 187 (HC) held that initiating a winding up petition while having already commenced an originating summons for minority oppression, both based on substantially the same facts and seeking similar reliefs, amounted to a prima facie multiplicity of proceedings.

[51] Similarly, in *Nazaruddin bin Mohd Shariff @ Masari & Anor v Roslan bin Maulud & Anor,* the court was unequivocal in holding that the duplication of issues and reliefs across two suits involving the same subject matter would constitute an impermissible attempt to litigate the same dispute more than once.

[52] In applying these authorities to the facts before me, I find that the plaintiffs' pursuit of the present suit, in parallel with Suit 633, falls afoul of the prohibition against duplicative litigation. This court must guard against the risk of inconsistent findings, unnecessary expenditure of judicial time, and the possibility of a party securing multiple bites at the proverbial cherry.

[53] Learned counsel for the defendant also contends that the present suit is barred by the doctrine of issue estoppel. This is on the basis that the plaintiffs,

together with Deepak Jaikishan, had previously commenced legal proceedings namely Suit 225 and Suit 793; wherein they had similarly sought to impugn the validity and enforceability of various settlement agreements concluded with Bank Rakyat, including the second settlement agreement.

[54] Upon review of the pleadings and decisions in those earlier proceedings, it is clear that the plaintiffs' principal contention in the Suit 225 and Suit 793 was that the very same settlement agreements now once again under challenge were invalid, unenforceable, and inconsistent with their legal rights. Azimah Omar J (as Her Ladyship then was), the learned judge in Suit 793, distilled the core relief sought as a wholesale invalidation of the settlement agreements. Notably, at para [54] of her judgment, Her Ladyship observed:

> [54] This court must not lose sight of the simple core relief that the plaintiffs are seeking in the present case. Amidst the cry for damages, the plaintiffs are seeking that the court finds that all of the prior settlement agreements are invalid and unenforceable. To wit, these are the same settlement agreements and relief that the bank relied upon during the life of all the prior Litigations. Thus, the plaintiffs should have raised their challenge against the validity of the facility agreement and the settlement agreements there and then and not wait for years before initiating their own action to raise what it could have raised (but have not) in the prior suits.

[55] In light of these findings, I am compelled to agree with the defendant that the doctrine of issue estoppel squarely applies to bar the present claim. The principle, as enunciated by the Supreme Court in *Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd*, is that a party is estopped not only from relitigating issues which were actually decided in a prior action, but also from raising any issue which could and should have been litigated in the earlier action, but was not — whether due to oversight, tactical reserve, or strategic omission.

[56] The rationale is firmly grounded in the need to ensure finality of litigation and to guard against the piecemeal presentation of claims across multiple proceedings involving the same subject matter and parties. As Azimah Omar J (as Her Ladyship then was) rightly held at para [58] of Suit 793 judgment:

> ... Litigants cannot be allowed to reveal their causes of action on a staggered basis, intending to inundate the court and the opposing party in an unending saga of litigation. There must be finality in litigation, and to decide against such finality would only open the courts to a chasm of unending litigations.

[57] In the present suit, the plaintiffs are once again attempting to challenge the validity of the same settlement agreements and transactional conduct on substantially similar grounds. This assertion, though newly framed in religious and statutory language via a request for reference under s 56 of the Central Bank of Malaysia Act 2009, does not escape the boundaries of issue estoppel. It

is plainly an attempt to relitigate matters that either were or ought to have been raised in Suit 793 case and the related proceedings.

[58] Accordingly, I find that the plaintiffs are estopped from seeking the reliefs now prayed for in this action. The doctrine of issue estoppel bars this court from entertaining claims which should have been finally adjudicated in prior litigation. To permit otherwise would render the doctrine of res judicata a nullity and expose the judicial system to repetitive and vexatious litigation.

DECISION

[59] Upon a careful examination of the affidavit evidence and the surrounding circumstances, I am satisfied that the defendant has met the requisite threshold for an application under O 18 r 19, in line with the established principles set out in *Bandar Builders Sdn Bhd v United Malayan Banking Corporation Bhd.* Accordingly, the plaintiff's writ and statement of claim against the defendant are hereby struck out, with costs awarded in the sum of RM10,000.

Plaintiffs' writ and statement of claim against defendant struck out with costs of RM10,000.

Reported by Dzulqarnain Ab Fatar